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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF SARAH LUECK IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

DECLARATION OF SARAH LUECK

I, Sarah Lueck, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a Senior Policy Analyst at the Center on Budget and Policy Priorities ("CBPP"), headquartered in Washington, DC. CBPP is a non-partisan research and policy institute that purses federal and state policies designed both to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our deep expertise in budget and tax issues and in programs and policies that help low-income people, in order to help inform debates and achieve better policy outcomes.

2. In particular, our work includes research and analysis of budgets, taxes, low-income programs, and social insurance programs to ensure that programs serving low- and moderate-income people are adequately funded, accessible, and effective in helping beneficiaries meet basic needs while moving toward self-sufficiency. The scope of our work on low-income programs includes low-income tax credits, food assistance, family income support, low-income housing, and health care policy.

3. With respect to our work in health care policy, we strive to ensure that Medicare, Medicaid, the Children's Health Insurance Program ("CHIP"), and the Affordable Care Act ("ACA") provide coverage that meets the needs of low-income children and families, seniors, and people with disabilities. We also work to ensure that proposals that would affect these programs do not slash benefits for, or impose costs on, the nation's most vulnerable people.

4. We at CBPP are familiar with the Presidential Proclamation entitled "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States," signed by President Trump on October 4, 2019 (the "Proclamation"). Because of our focus on helping people access and maintain comprehensive health coverage through programs including Medicare, Medicaid, CHIP, and the ACA, the Proclamation raised immediate concern.

5. The Proclamation would require certain groups of intending immigrants to meet its new health coverage mandate or be denied entry into the United States. But only some types of coverage would count toward the mandate. Medicaid and subsidized coverage that individuals buy through ACA health insurance marketplaces would not. So-called short-term health plans would.

6. The purported rationale for the new health insurance mandate is that it will protect America's health care system and taxpayers from the burdens of uncompensated care. But the policy could easily *increase* uncompensated care, in two main ways.

7. First, the new policy adds to the climate of fear and confusion that discourages families that include immigrants from enrolling in public coverage programs for which they're eligible. While the proclamation only states that Medicaid and subsidized marketplace plans do not count toward the mandate, some families will likely believe that signing up

for these plans could prevent them or their family members from immigrating to the United States. Moreover, some people who wouldn't be subject to the assessment may nonetheless fear signing up for coverage that won't meet this new mandate. For example, a family may not sign their children up for Medicaid because they fear it could leave a parent unable to immigrate to the United States. There is strong evidence that other, similar policies have created a climate of fear that is discouraging eligible families from signing up for federal coverage programs.[*]

8. Second, the new policy steers potential immigrants and their family members away from comprehensive coverage through Medicaid or subsidized marketplace plans and toward short-term plans with large coverage gaps.

9. Short-term plans do not meet the federal standards and protections that apply to private, individual-market health plans, including ACA marketplace plans, yet separate federal rule changes that took effect in October 2018 lifted a prior three-month limit on the plans, allowing them to last up to 12 months or longer.

10. Short-term plans do not have to cover the "essential health benefits" that ACA marketplace plans are required to include and therefore often leave out essential benefits such as maternity and mental health care, substance use disorder treatment, and prescription drugs. In a study of short-term plans sold on two major online broker sites, 43 percent of plans didn't cover mental health services, 62 percent didn't cover substance use disorder treatment, and 71 percent didn't cover outpatient prescription drugs. No plans included maternity care.[†] Enrollees who need benefits that their plans lack would face high costs.

11. Short-term plans can charge high deductibles and cost-sharing for the benefits they do cover (i.e., a $5,000 deductible for a policy that lasts six months), exposing patients to high costs if they need care. And the plans may include dollar limits on how much they will pay out for a given service or in total for benefits over the life of the policy, or during the life of the enrollee. ACA plans, in contrast, limit people's deductibles and other out-of-pocket costs, a critical protection when someone faces catastrophically high spending, and are prohibited from imposing dollar limits on essential health benefits. And Medicaid offers comprehensive coverage with no or low cost-sharing.

12. Short-term plans can deny coverage or charge higher premiums to people with pre-existing conditions, and they typically do not cover any medical services related to a pre-existing condition. If a short-term plan enrollee receives medical care, the insurer may investigate their medical history for evidence that the care they already received is related

[*] Hamutal Bernstein *et al*., "With Public Charge Looming, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018," Urban Institute, May 21, 2019. https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018

[†] Karen Pollitz *et al*., "Understanding Short-Term Limited Duration Health Insurance," Kaiser Family Foundation, April 23, 2018, https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/.

to a pre-existing condition, a practice known as "post-claims underwriting." In one case, a Georgia woman who was diagnosed with breast cancer after she bought a short-term plan was then left with $400,000 in medical bills because the insurer said the disease pre-dated the coverage.[‡]

13. A recent review of select short-term health plans available in Philadelphia concluded that even when people experience *unanticipated* illnesses, clearly unrelated to a pre-existing condition, the coverage available under short-term health plans was so sparse that enrollees would face large out-of-pocket charges. For example, one Philadelphia plan limited coverage of hospitalization to no more than $1,000 per day, far less than the U.S. average cost of more than $5,000 per day. Another Philadelphia plan limited benefits for an appendectomy to $2,500, when the average cost of that procedure is nearly $14,000.[§]

14. Another study found that a sample person who enrolls in a short-term plan and then is diagnosed with breast cancer (after having no history of the disease) could expect to pay roughly $40,000 to $100,000 for treatment, in addition to premiums -- far more than under ACA marketplace plans, which include more robust benefits and limit each person's yearly cost-sharing to no more than $7,900.[**]

15. By discouraging families that include immigrants from enrolling in public coverage programs for which they're eligible, the Proclamation is likely to raise uninsured rates among lawfully present immigrants and potentially their U.S. citizen family members. Our research finds a very strong relationship between uninsured rates and uncompensated care costs.[††]

16. In addition, by prodding more people into short-term plans, the Proclamation will leave more people with gaps in their benefits and high medical bills. This also will increase uncompensated care, exacerbating the very problem the Proclamation purports to address.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 7, 2019 at Washington, DC.

Sarah Lueck

SARAH LUECK

[‡] Erik Larson and Zachary Tracer, "The Health Plans Trump Backs Have a Long History of Disputes," Bloomberg, October 16, 2017, https://www.bloomberg.com/news/articles/2017-10-16/trump-s-insurance-directive-renews-preexisting-conditions-fight.

[§] Jackson Williams, "Short-term health insurance coverage is almost worthless," *Philadelphia Inquirer*, July 30, 2018, http://www2.philly.com/philly/health/health-cents/short-term-health-insurance-coverage-is-almost-worthless-20180730.html.

[**] *Inadequate Coverage: An ACS CAN Examination of Short-Term Health Plans,* American Cancer Society Cancer Action Network, May 13, 2019. https://www.fightcancer.org/sites/default/files/ACS%20CAN%20Short%20Term%20Paper%20FINAL.pdf

[††] Matt Broaddus, "ACA Medicaid Expansion Drove Large Drop in Uncompensated Care," CBPP, November 6, 2019. https://www.cbpp.org/blog/aca-medicaid-expansion-drove-large-drop-in-uncompensated-care